

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBIN L. ALVARES, }
{}
Plaintiff, } No. 05-320 Erie
vs. } Judge McLaughlin
EDINBORO UNIVERSITY OF PENNSYLVANIA, } Magistrate Judge Baxter
Defendant. } } **Electronically Filed**

DEFENDANT'S MOTION TO DISMISS COMPLAINT

AND NOW, comes the defendant, Edinboro University of Pennsylvania ("the University"), by its attorneys, Thomas W. Corbett, Jr., Attorney General, Scott A. Bradley, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and, pursuant to Rule 12 of the Federal Rules of Civil Procedure, respectfully moves the Court to dismiss the Complaint heretofore filed by plaintiff Robin L. Alvares, upon the following grounds:

1. The Complaint should be dismissed at Count I for failure to state a claim upon which relief can be granted.
2. The Complaint should be dismissed at Counts II, III and IV because the Defendant enjoys immunity from such claims pursuant to the Eleventh Amendment and, additionally at Count III, because the Defendant is not a "person" for purposes of 42 U.C.S. § 1983.
3. The Defendant has herewith filed a Brief in Support of this Motion, providing reasons in support of the foregoing assertions with greater particularity; the contents therein are incorporated by reference.

WHEREFORE, the Defendant respectfully requests that the Complaint be dismissed for failure to state any claim upon which relief can be granted.

Respectfully submitted,

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Date: December 22, 2005